

A close-up photograph of a hand holding a camera lens. The lens is black with silver accents and has 'MD 28mm 1:2' printed on it. The hand is positioned as if about to take a photo. The background is blurred.

ALSTON & BIRD

CPSC RECALL SNAPSHOT

A MONTHLY REVIEW OF CONSUMER PRODUCT RECALLS
AND CIVIL PENALTIES ANNOUNCED BY THE CPSC

November 2017

Welcome to the November edition of the Alston & Bird *CPSC Recall Snapshot*.

The CPSC again saw multiple noteworthy events occur in October. On October 26, 2017, the CPSC issued a [final decision and order](#) on Zen Magnets and Neoballs rare-earth magnet sets. The order set aside an administrative judge's 2016 ruling that the magnet sets did not present a substantial product hazard when accompanied by proper warnings and age recommendations. The CPSC found the magnet sets to be a substantial product hazard and ordered a stop sale of the magnet sets. Specifically, the CPSC determined that warnings do not mitigate the substantial risk to the public the magnet sets create and held that it is reasonably foreseeable that children will ingest the magnet sets. Once ingested, the magnets can attract each other and other metal objects, leading to the magnets becoming lodged in the digestive system. The parties were ordered to submit to the CPSC within 30 days a proposed corrective action plan that includes a refund and notice to the public.

On October 18, the CPSC [issued a final rule](#) prohibiting children's toys and child care articles from containing more than 0.1 percent of five phthalate chemicals, namely: (1) diisononyl phthalate (DINP); (2) di-n-pentyl phthalate (DPENP); (3) di-n-hexyl phthalate (DHEXP); (4) dicyclohexyl phthalate (DCHP); and (5) diisobutyl phthalate (DIBP). This final rule led a New York federal judge to toss a case filed against the CPSC over the CPSC's delay in issuing the final rule. The rule passed after the Chronic Hazard Advisory Panel (CHAP) examined the health effects of the phthalates and determined that they cause harmful effects on male reproductive development. The rule also removed the interim prohibition on "children's toys that can be placed in a child's mouth and child care articles" containing concentrations of more than 0.1 percent of di-n-octyl (DNOP) and diisodecyl (DIDP) because the CPSC determined that those phthalates do not cause adverse effects.

Commissioner Joseph Mohorovic, who recently resigned as a commissioner, Commissioner Elliot Kaye, and Acting Chairman Ann Marie Buerkle issued statements regarding the final rule, with Commissioners Mohorovic and Buerkle explaining their decision to not join in the CPSC's passing of the rule, and Commissioner Kaye lauding the rule's benefits. In [his statement](#), Commissioner Mohorovic explained the rule did not meet the CPSC's "reasonable certainty of no harm" test because it was based on old data from 2005. More recent data, he explained, prevents the CPSC from saying "with confidence that any of the general population is exposed to an unreasonable level of risk." Similarly, Acting Chairman [Buerkle explained](#) that she agreed with the decision to remove the interim bans on DNOP and DIDP, but disagreed with the permanent ban for DINP and the decision to extend the prior rule "to a much larger class of toys." She believes "the data do not justify either decision." Conversely, Commissioner Kaye explained in [his statement](#) that this rule was necessary to help curb our legal

system's allowance for "citizens – especially its youngest children – [to be] used as guinea pigs to determine if they are being poisoned every day by chemicals in their food, their homes and their household products." He emphasized that CHAP's "methods and conclusions were validated by a substantial peer review" and that the CPSC considered "the latest and most credible and relevant scientific data available."

Click [here](#) to subscribe to the *Snapshot*. For additional information or questions about CPSC issues, please email me at: jenifer.keenan@alston.com.

Sincerely,

A handwritten signature in black ink that reads "Jenifer Keenan". The signature is written in a cursive style with a large initial "J" and "K".

[Jenifer Keenan, Esq.](#)

Editor

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Voluntary Recalls Announced by the CPSC in October 2017

NUMBER OF RECALLS BY PRODUCT CATEGORY

Child/Infant – 5

Furniture – 3

Sporting Goods – 3

Vehicle – 3

Housewares – 2

Appliance – 1

Yard Equipment – 1

PRODUCT	PRODUCT CATEGORY	ALLEGED HAZARD	REPORTED INJURIES	NUMBER OF PRODUCTS
Plates and Bowls Press Release	Child/Infant	Choking Hazard	4	3.6 million U.S. 1.9 million Can.
Wiggle Ball Press Release	Child/Infant	Choking Hazard	0	29,700 U.S. 3,000 Can.
Baby Gym Press Release	Child/Infant	Strangulation Hazard	0	500
Infant Motion Seat Press Release	Child/Infant	Fire Hazard	0	63,000 U.S. 2,000 Can.
Musical Toy Press Release	Child/Infant	Choking Hazard	0	587,000 U.S. 1,000 Can.
Chair Press Release	Furniture	Fall Hazard	2	2,600
Rocking Chair Press Release	Furniture	Fall Hazard	6	1,600 U.S. 190 Can.
Ottoman Press Release	Furniture	Suffocation/ Choking Hazard	0	7,500
Bicycle Brake Press Release	Sporting Goods	Crash/Injury Hazard	0	7,000
Scuba Tank Transmitter/POD Press Release	Sporting Goods	Injury Hazard	1	35,500 U.S. 4,000 Can.

PRODUCT	PRODUCT CATEGORY	ALLEGED HAZARD	REPORTED INJURIES	NUMBER OF PRODUCTS
Diving Regulator Press Release	Sporting Goods	Drowning Hazard	0	480
Off-Highway Vehicle Press Release	Vehicle	Fire/Burn Hazard	0	6,300
Off-Highway Vehicle Press Release	Vehicle	Crash Hazard	0	19,000
Off-Highway Vehicle Press Release	Vehicle	Fire Hazard	0	14,100 U.S. 5,300 Can. 100 Mex.
Outlet Converter Press Release	Housewares	Fire/Shock Hazard	1	42,000
Knife and Server Set Press Release	Housewares	Laceration Hazard	4	18,900
Dishwasher Press Release	Appliance	Fire Hazard	0	408,000 U.S. 61,000 Can.
Wood Chipper Press Release	Yard Equipment	Injury Hazard	0	25

The CPSC did not announce any civil penalties in October 2017.

Alston & Bird helps companies navigate the CPSC's complex regulations—from testing, to labeling, to recalls—and everything in between. We also help companies monitor and respond to complaints submitted to the CPSC's consumer complaint database, www.SaferProducts.gov. For additional information or questions about recalls, the SaferProducts.gov database or other CPSC issues, please email jenifer.keenan@alston.com or visit the firm's website at www.alston.com.

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